



2004 SUMMARY of BILLS Affecting the Maine Department of Environmental Protection

From the 121st Maine Legislature Second Regular Session January 7, 2004 to January 30, 2004 and Second Special Session February 3, 2004 to April 30, 2004

2004 121st LEGISLATURE SECOND REGULAR SESSION AND SECOND SPECIAL SESSION

SUMMARY OF BILLS

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The general effective date for non-emergency laws enacted in the Second <u>Regular</u> Session is April 30, 2004. {NOTE: LD 1828-PL 2003 Ch. 513-is the only bill in this summary enacted during the Second Regular Session.}

The general effective date for non-emergency laws enacted in the Second Special Session is July 30, 2004.

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(This summary is intended for general information only. It is not intended for use as a legal reference.)

Printed on recycled paper Cover photograph: The "Steven J. Eufemia" – DEP's newest oil spill response vessel Bureau of Air Quality

Bureau of Air Quality

LD	TITLE	COMMITTEE	RESULT	REFERENCE
1492	An Act To Promote the Production and Use of Fuels Derived from Agricultural and Forest Products (DEP Bill)	TAX	Signed: 5/10/2004	PL 2004 C. 698

This bill establishes an income tax credit of 5 cents per gallon for the production of gaseous and liquid fuels made from biomass. This tax credit should encourage the production and use of fuels derived from agricultural and forest resources, byproducts and wastes (e.g. ethanol, methanol derived from biomass, levulinic acid, biodiesel, pyrolysis oils from wood, hydrogen or methane from biomass) thereby replacing products that are currently derived from petroleum, coal, natural gas or other forms of fossil carbon. The bill also clarifies that the income tax credit applies only to tax attributable to income derived from the production of biofuel and requires that the biofuel meet state and federal regulatory requirements.

The bill requires the DEP to certify the eligibility of biofuels producers seeking the income tax credit.

Sponsor: Representative Suslovic

1870 An Act To Prohibit the Sale of Gasoline Containing MTBE NAT Signed: PL 2004 4/14/2004 C. 638

This bill does the following:

- 1. It prohibits the sale of gasoline containing more than 1/2 of 1% by volume of the additive known as MTBE by January 1, 2007.
- 2. It authorizes the Commissioner of Environmental Protection to issue an emergency order that waives the sales prohibition if necessary.
- 3. It requires the DEP to present a report to the Natural Resources Committee on the implementation and status of the sales prohibition by March 1, 2006.
- 4. It deletes references in current statute to the State's goal of eliminating MTBE in gasoline by January 1, 2003.

Sponsor: Representative Bliss

LD	TITLE	COMMITTEE	RESULT	REFERENCE
1158	An Act To Protect Maine's Coastal Water	NAT	Signed:	PL 2004

This carry over bill does the following:

- 1. It clarifies an existing statutory standard that discharging sludge is not allowed.
- 2. It proposes a number of definitions, including definitions of "graywater", "large commercial passenger vessel" and "small commercial passenger vessel."
- 3. It exempts from regulation graywater discharges from small commercial passenger vessels and certain other vessels. The DEP is required to report back to the Natural Resources Committee by January 1, 2006 concerning further regulation of graywater discharges from small commercial passenger vessels. The DEP may include in the report any recommended legislation concerning vessel discharges. The Natural Resources Committee is authorized to report out legislation during the Second Regular Session of the 122nd Legislature concerning graywater discharges from small commercial passenger vessels.
- 4. It prohibits the discharge of graywater or a mixture of graywater and blackwater to coastal waters by owners or operators of <u>large commercial passenger vessels</u>. Under the bill, beginning January 1, 2006, a large commercial passenger vessel that is equipped with an advanced wastewater treatment system may discharge graywater or a mixture of graywater and blackwater if the discharge complies with federal effluent standards and the owner or operator of the vessel complies with record-keeping and sampling and reporting requirements of federal law and is issued a general permit from the DEP. The department is required to adopt routine technical rules to implement the requirements of federal law.
- 5. It allows a <u>large commercial passenger vessel</u> that is equipped with a discharge system that requires continuous discharge to discharge graywater or a mixture of graywater and blackwater prior to January 1, 2006 if the vessel is authorized to discharge in Alaskan waters pursuant to the federal law cited above.
- 6. It requires the DEP to enter into a memorandum of agreement with the United States Coast Guard to consolidate the information requirements of the DEP and the Coast Guard to the extent acceptable to the Coast Guard.
- 7. It requires that <u>large commercial passenger vessels</u> report to DEP all discharges of blackwater in violation of federal law outside no-discharge zones as well as all blackwater discharges within no-discharge zones. Beginning on January 1, 2006, large commercial passenger vessels are required to report all unauthorized discharges of graywater to DEP.
- 8. It makes a change specifically to exclude discharges from vessels from the prohibited class of "new discharges of domestic pollutants" untreated by a municipal facility.
- 9. It allows the DEP to request authorization from the Natural Resources Committee to apply to the federal Environmental Protection Agency for additional "no-discharge zone" designations in the future
- 10. It requires the DEP to report back to the Natural Resources Committee by January 15, 2005 concerning issues related to air emissions from vessels. The report must include draft legislation necessary to implement any proposal put forward in the report. The Natural Resources Committee is authorized to report out legislation during the First Regular Session of the 122nd Legislature relating to air emissions from vessels.

Sponsor: Senator Brennan

LD	TITLE	COMMITTEE	RESULT	REFERENCE
1723	An Act to Amend the Laws Regarding Invasive Aquatic Species	NAT	Signed: 4/14/2004	PL 2004 C. 627

This bill does the following:

- 1. It prohibits watercraft from being placed on inland waters without a lake and river protection sticker.
- 2. It adds a provision that a person who operates a watercraft on inland waters without a sticker commits a civil violation.
- 3. It removes the requirement that only warnings can be issued for sticker violations when there are other boating law violations.
- 4. It provides that, if a person who has already committed 3 or more violations of IF&W laws within the last 5 years, places or operates a watercraft on inland waters without a sticker, that person commits a Class E crime.
- 5. It provides that if a person operates, launches or removes a watercraft at a restricted access site or refuses inspection of a watercraft in violation of a surface use restriction order, that person commits a civil violation. If that person has committed 3 or more violations of IF&W laws within 5 years, that person commits a Class E crime.
- 6. It allows a municipality to appoint a harbormaster to only enforce the invasive species laws.
- 7. It requires a person to remove aquatic plants or parts of plants from a vehicle, watercraft or trailer. It allows the Commissioners of DEP and IF&W to restrict access to an infested waterbody by issuing an emergency order and allows the commissioners to require inspections and cleaning of watercraft and trailers at sites identified in the order. Designated state boat inspectors must conduct the inspections.

Sponsor: Senator Martin

1833 An Act To Amend Water Quality Laws To Aid in Wild NAT Signed: PL 2004 Atlantic Restoration 3/24/2004 C. 574

This bill allows for stormwater discharges to Class A and Class AA waters provided that the discharges are in compliance with state and local requirements.

The bill also allows for a limited number of wastewater discharges to Class A and Class AA waters for the purpose of improving the habitat of Atlantic Salmon provided that the waters are or were once populated by a distinct population segment of Atlantic salmon as determined pursuant to the federal Endangered Species Act. Under the bill, only 3 discharge licenses may be issued and the licenses may not be effective for more than 5 years from the date of issuance.

Lastly, the bill requires the Atlantic salmon Commission to report to the Natural Resources Committee concerning the discharge licenses allowed under the bill and the status of Atlantic salmon restoration in connection with those licenses.

Sponsor: Representative Koffman

LD	TITLE	COMMITTEE RESULT	REFERENCE

1837 An Act Relating to the Consideration of the Cumulative Effects on Protected Natural Resources

NAT Signed: PL 2004 3/16/2004 C. 554

Based upon recommendations set forth by the DEP pursuant to Resolve 2003 chapter 14 from last session, this bill requires Tier 2 freshwater wetland projects to meet all of the environmental standards under the Natural Resources Protection Act statutes (NRPA).

Tier 2 projects are those that impact from 15,000 square feet to one acre of wetland. Under this bill, these projects would now have to meet habitat, fisheries and scenic impact standards in addition to the water quality standards that they are subject to.

Sponsor: Representative Koffman

1849 Resolve, Regarding Legislative Review of Chapter 355: Sand Dune Rules, a Major Substantive Rule of the Department of Environmental Protection NAT Signed: Res. 2004 4/14/2004 C. 130

(Emerg.)

This resolve does the following:

- 1. It authorizes the final adoption of the DEP's sand dune rules only if the rules are amended to provide that elevators that are required for compliance with the requirements of the Americans with Disabilities Act (ADA) are exempt from the requirement that a new structure or addition to an existing structure may not be constructed on or seaward of a frontal dune. However, the resolve requires that the rules must be amended to provide that elevators or ramps serving buildings required to be compliant with the ADA must be designed and constructed so as to minimize intrusion on the frontal dune. The resolve specifies that the DEP is not required to hold hearings or conduct other formal proceedings prior to finally adopting the rules in accordance with this resolve.
- 2. It requires the DEP to provisionally adopt and submit to the Legislature revised sand dune rules by January 16, 2006.
- 3. It requires the DEP and DOC to convene a meeting of stakeholders by May 15, 2004 to consider various issues associated with sand dunes.
- 4. It requires the DEP to report to the Natural Resources Committee on the progress of the sand dune stakeholders meetings and to submit draft revised sand dune rules and a statewide beach nourishment policy by January 17, 2005.
- 5. It requires the DEP to submit by January 16, 2006 to the Natural Resources Committee recommendations on a state acquisition program, wildlife habitat management initiatives and removal of the existing statutory prohibition on the use of outdated v-zone maps.

Sponsor: Senator Koffman

LD	TITLE	COMMITTEE	RESULT	REFERENCE
1857	An Act To Implement the Recommendations of the Task Force on the Planning and Development of Marine Aquaculture in Maine	MAR	Signed: 4/22/2004	PL 2004 C. 660

This bill contains the following provisions of interest to the DEP.

- 1. It establishes the Aquaculture Management Fund to develop and manage water quality licensing and monitoring criteria for aquaculture and to analyze collected data, process license applications and make information about aquaculture available to the public. The bill requires finfish aquaculture leaseholders to get approval from the Department of Marine Resources for contractors to be used by leaseholders for data collection services.
- 2. It repeals the tax of one-cent per pound assessed on finfish, increases certain aquacultural fees and establishes new fees related to aquacultural leases. Revenues raised pursuant to these fees are dedicated to the Aquacultural Management Fund.
- 3. It repeals the requirement that approval of an aquacultural lease is contingent upon DEP's certification that the lease project will not violate water quality standards set forth in law.

Sponsor: Representative Bull

1858 An Act To Change the Point System for Clearing Vegetation NAT Adjacent to Protected Natural Resources Signed: PL 2004 4/14/2004 C. 637

This bill amends the point system for clearing vegetation adjacent to protected natural resources. It changes the definition of "well-distributed stand of trees" by increasing the area from a 25-foot by 25-foot square area to a 25-foot by 50-foot rectangular area and by changing the rating system. The bill also provides that rules adopted by the Board of Environmental Protection and the Land Use Regulation Commission pursuant to this bill are considered routine technical.

Sponsor: Senator Martin

1866 An Act Relating to Stormwater Management NAT Signed: PL 2004 4/08/2004 C. 607

This bill exempts certain manure storage facilities from storm water management review. The bill also requires the Board of Environmental Protection to provisionally adopt rules to regulate storm water management by January 2, 2005. Lastly, the bill requires the DEP to submit a bill to the First Regular Session of the 122nd Legislature to resolve inconsistencies between those rules and the storm water statutes set forth in 38 MRSA Section 420-D.

Sponsor: Senator Martin

LD	TILL	COMMITTEE	RESULI	REFERENCE	1
1891	An Act To Reclassify Certain Downeast Waters	NAT	Signed: 4/22/2004		

This bill reclassifies certain Downeast waters that were proposed for reclassification by the DEP during the First Regular Session of the 121st Legislature but were not included in the report of the Natural Resources Committee during that session. The bill also provides that the DEP must take into account when adopting water use standards, pursuant to section 470-E of Title 38, that it is not the Legislature's intent to prohibit all water use in those waters that are reclassified in the bill.

Sponsor: Representative Koffman

1899 An Act To Amend the Dissolved Oxygen Standard for NAT Signed: PL 2004 Class C Waters 4/22/2004 C. 664

This bill provides that dischargers to Class C waters that were issued final discharge licenses or water quality certificates prior to March 16, 2004 that are based on a 6.5 parts per million dissolved oxygen criterion must continue to be licensed using a temperature of 24 degrees centigrade or the ambient temperature of the water body, whichever is lower. Final discharge licenses and water quality certificates not based on a 6.5 parts per million dissolved oxygen criterion prior to March 16, 2004 must be based on a 6.5 parts per million dissolved oxygen criterion at a temperature of 22 degrees centigrade or the ambient temperature of the water body, whichever is lower.

Sponsor: Senator Martin

1916 An Act to Correct Errors and Inconsistencies in the Laws JUD Signed: PL 2004 of Maine 5/06/2004 C. 688 (Emerg.)

This bill corrects a conflict in the law governing the discharge of waste from watercraft. The conflict was created by Public Law 2003, chapters 277 and 452 which affected the same provision of law. This bill incorporates the changes made by both chapter 277 and chapter 452 and provides an effective date of July 1, 2004.

Sponsor: Representative Norbert

LD	TITLE	COMMITTEE	RESULT	REFERENCE
1655	An Act to Amend Certain Laws Relating to Environmental Protection (DEP Bill)	NAT	Signed: 3/16/2004	PL 2004 C. 551

This bill makes the following changes to certain state environmental laws.

- 1. It exempts wastewater treatment plants from the licensing provisions for electrical installations.
- 2. It deletes references to the Maine Petroleum Association in the laws affecting the memberships of the Board of Underground Storage Tank Installers and the Fund Insurance Review Board.
- 3. It reduces the frequency of reporting under the Clean Government Initiative. Under current law, the directors of the initiative are required to file a report with the Legislature every year. This bill moves to biennial reporting beginning January 1, 2006.
- 4. It gives the DEP authority to license categories of subsurface discharges by rule when the discharges will not have a significant adverse effect on the quality or classification of groundwaters of the State. It further clarifies that prospective rules governing certain wastewater discharges will be designated as routine technical rules unless they are incorporated within a chapter of rules that are otherwise designated as major substantive rules.
- 5. It changes the frequency of a public hearing requirement to accord with minimum federal requirements concerning hearings related to the review of water quality standards.
- 6. It corrects an error in the existing statute governing the water quality classification of the Dennys River Basin. Prior to this bill, the statute inadvertently identified the wrong bridge relative to where tidewater occurs on the Dennys River. This bill changes the statute to designate the correct bridge relative to the location of tidewaters.
- 7. It amends the "sand supply" standard in the Maine Revised Statutes, Title 38, section 480-D, subsection 7 by adding "or gravel" in order to make it consistent with the definition of "coastal sand dune systems" in Title 38, section 480-B, subsection 1.
- 8. It makes a claimant ineligible to receive 3rd-party damage payments from the Maine Coastal and Inland Surface Oil Clean-up Fund or the Ground Water Oil Clean-up Fund if the claimant caused the oil discharge that resulted in the damages or the claimant otherwise meets the definition of "responsible party" under Maine oil discharge law.
- 9. It authorizes the Commissioner of Environmental Protection to dismiss a claim for damages associated with an oil discharge if the claim is not timely filed, the claimant does not provide the information needed to process the claim or the claimant is found to be responsible for the discharge.
- 10. It provides that the discovery of oil in drinking water supplies, soil or other locations on the premises of an underground storage facility is evidence of a leak. Such evidence of leakage must be reported to the DEP unless reporting is otherwise exempted under existing provisions of law.
- 11. It allows operators of underground oil storage facilities to forego inventory analysis if the storage tanks are monitored for leaks by a method able to detect a product loss of 0.2 gallons or less per hour. Prior to this bill, this was allowed only if the monitoring system was capable of detecting a product loss of 0.1 gallons or less per hour.
- 12. It repeals obsolete language governing bare steel underground oil storage tanks. The language is obsolete because all such tanks must have been removed from service by October 1, 1998. The installation of new bare steel tanks is prohibited.
- 13. It replaces a previously repealed definition of "hospital" in the section of law that exempts hospitals from the prohibition against new biomedical waste disposal facilities. It also exempts from the prohibition a group of hospitals acting through a hospital association.
- 14. It deletes an incongruent reference in the law governing the sale of elemental mercury for manufacturing purposes.
- 15. It reduces the frequency with which the Mercury Products Advisory Committee must meet.

LD TITLE **COMMITTEE** RESULT REFERENCE

16. It deletes text appearing in Title 38, section 1864 that requires prior written consent from public water suppliers before chemical control agents are used on a waterbody that is a public water supply, and moves the text to its own section. The change is proposed so that the consent would be required regardless of whether watercraft use had been restricted for the waterbody due to the presence of invasive plants.

Sponsor: Senator Martin

1686 An Act To Encourage Cost Savings by State Employees

SLG

Signed: PL 2004 5/07/2004 C. 692

This bill does the following:

- 1. It establishes the Employee Suggestion System, whereby state employees in classified service are eligible for cash or honorary awards for suggestions that would result in substantial savings or improvements or efficiencies in state operations. A cash award would be limited to 10% of the first years estimated saving, up to a cap of \$2,000.
- 2. It establishes the Employee Suggestion System Board consisting of the Commissioner of Administrative and Financial Services and two other departmental commissioners appointed by the Governor.
- 3. It provides exclusive authority to the Employee Suggestion System Board to make awards. All decisions of the board are final and are not subject to judicial review.
- 4. It requires the board to forward all suggestions to the Office of Program Evaluation and Government Accountability a minimum of 2 times per year.
- 5. It authorizes the board to establish administrative fees through the rule-making process.
- 6. It prohibits discrimination against an employee who suggests savings or efficiencies in good faith under the Employee Suggestion System and, if discrimination occurs, provides remedies available under the Whistleblowers' Protection Act.

The bill, modeled on a law that was repealed in 1995, takes effect on January 1, 2005.

Sponsor: President Daggett

1766 An Act To Simplify the Finance Authority of Maine

BRED

PL 2004 3/10/2004 C. 537

Signed:

This bill contains provisions repealing DEP certification requirements for certain loan projects considered by the Finance Authority of Maine (FAME). In place of the repealed provisions are requirements that DEP provide a written assessment to FAME of the environmental conditions known by the Department to exist at a particular project location so that FAME fully considers environmental risks when making its decisions. Environmental conditions posing risks that must be considered include, but are not limited to, licensing obligations, existing or historic regulatory noncompliance and site clean-up responsibilities.

Sponsor: Representative Kaelin

LD	TITLE	COMMITTEE	RESULT	REFERENCE	
1815	An Act To Establish the Maine Jobs, Trade and	LAB	Signed:	PL 2004	
	Democracy Act		5/10/2004	1 C 699	

This bill creates the Citizen Trade Policy Commission to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements.

The bill requires the Office of Policy and Legal Analysis to provide the necessary staff support for the operation of the commission. After one year, the commission is required to assess the need for and qualifications of a staff person, for example, an executive director. If the commission determines that it requires such a person, it may request additional funds from the Legislature.

The bill authorizes the commission to seek and accept outside funding to fulfill commission duties. Prompt notice of solicitation and acceptance of funds must be sent to the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council, along with an accounting that includes the amount received, the date that amount was received, from whom that amount was received, the purpose of the donation and any limitation on use of the funds. The executive director administers any funds received.

By December 31, 2009, the commission is required to conduct an evaluation of its activities and recommend to the Legislature whether to continue, alter or cease the commission's activities.

Lastly, the bill requires the Commissioner of DEP or the commissioner's designee to serve as an ex officio, nonvoting member of the commission.

Sponsor: Speaker Colwell

An Act to Make Supplemental Appropriations and
Allocations for the Expenditures of State Government and
to Change Certain Provisions of the Law Necessary for the
Proper Operations of State Government for the Fiscal Years
Ending June 30, 2004 and June 30, 2005

Signed: PL 2004 1/30/2004 C. 513

This supplemental budget bill for the fiscal years ending June 30, 2004 and June 30, 2005 does the following:

- 1. It provides for a two-year, \$86,931 total deappropriation of Personal Services funds in the Bureau of Land and Water Quality. These reductions are attained by delaying the filling of vacancies where possible and by journaling costs as appropriate to Federal and Dedicated Funds.
- 2. It provides for a two-year, \$50,105 total deappropriation of Personal Services funds in the Bureau of Remediation and Waste Management. These reductions are attained by delaying the filling of vacancies where possible and by journaling costs to other funding sources as appropriate.
- 3. It provides for a two-year, \$20,477 total deappropriation of All Other funds in the Bureau of Air Quality. These reductions are attained by reducing operational expenditures.
- 4. It takes effect on April 30, 2004.

Sponsor: Representative Brannigan

1919 An Act to Make Supplemental Appropriations and AFA Signed: PL 2004 Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2004 and June 30, 2005	LD	TILLE	COMMITTEE	RESULI	REFERENCE
	1919	Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal		O	

This is a supplemental budget bill for fiscal years ending June 30, 2004 (FY 04) and June 30, 2005 (FY 05). Enacted as a non-emergency bill during the Second Special Session, it does not become effective until July 30, 2004. As a result, the bill makes no budgetary changes in FY 04. The following is a partial listing of provisions affecting the DEP in FY 05.

- 1. It provides for a \$75,000 increase in allocation to the Stormwater Compensation Fund to allow for necessary expenditures.
- It merges the Borrow Pit Account into the Maine Environmental Protection Fund as a subaccount and provides for the allocation of funds and related All Other costs to ensure adequate allocations for the Borrow Pit program. An ES IV position and related All Other costs will be transferred into the account
- 3. It transfers several positions from one funding source to another to align functions with funding.
- 4. It provides funds to extend 3 existing limited-period positions through June 17, 2005.
- 5. It provides funding for approved reclassifications and range changes.
- 6. It reorganizes the ACE Service Center and delegates administration of the center to the Commissioner of DEP
- 7. It extends the use of personal computers and peripheral devices to a minimum of 4 years before replacement.
- 8. It reauthorizes merit increases for FY 04.

Sponsor: Representative Brannigan

1926 An Act To Implement the Recommendations of the Joint SLG Signed: PL 2004 Standing Committee on State and Local Government Pursuant to the State Government Evaluation Act

This bill implements the recommendations of the State and Local Government Committee regarding the State Government Evaluation Act (GEA). It amends the GEA by setting new dates for agency reviews. The DEP and the BEP are scheduled to undergo their next GEA review in 2007. The bill also requires a designated agency employee to notify the State Controller immediately when a nonstate entity requests access to agency accounting records. It also changes the name of the Department of Administration and Financial Services, Bureau of Accounts and Control to the Office of the State Controller.

Sponsor: Representative McLaughlin

LD	TITLE	COMMITTEE	RESULT	REFERENCE
1929	An Act To Promote Economic Development in the State by Encouraging the Production of Electricity from Renewable and Indigenous Resources	UTE	Signed: 4/22/04	PL 2004 C. 665

This bill, proposed by the Governor, does the following.

- 1. It requires the Public Utilities Commission to inform consumers in this State of the benefits of electricity generated in this State using renewable resources and authorizes the commission to create a brand or logo to identify such resources.
- 2. It requires the Public Utilities Commission to adopt major substantive rules establishing standards and procedures for incorporating renewable resources that are constructed after March 1, 2004 into standard-offer service. The rules must be submitted for legislative review by March 1, 2005.
- 3. It establishes legislative findings with regard to wind energy production in Maine. It requires the Public Utilities Commission to monitor markets and sale opportunities accessible to wind power installations in Maine to determine whether such markets and opportunities are available for the sale of wind energy and authorizes the commission, in consultation with the Attorney General, to initiate regulatory and other legal action to protect access to markets by wind power facilities located in the State
- 4. It directs the Public Utilities Commission to conduct a study of the viable potential for wind power facilities in the State and to review what qualifies as renewable resources in the Maine Revised Statutes, Title 35-A to determine whether changes may be appropriate and to issue a report of its findings and recommendations to the Utilities and Energy Committee by March 15, 2005.

Sponsor: Representative Lundeen

1957 An Act To Implement the Recommendations of the Committee To Study Compliance with Maine's Freedom of Access Laws

JUD Signed: PL 2004 5/11/2004 C. 709

This bill is the report of the Joint Standing Committee on Judiciary pursuant to Resolve 2003, chapter 83, which established the Committee to Study Compliance with Maine's Freedom of Access Laws. The study committee submitted its report and presented recommended legislation. The recommended legislation was amended and does the following:

- 1. It amends the executive session law to require that the motion to enter executive session must include a citation of one or more sources of statutory or other authority permitting the executive session for the nature of the business stated in the motion.
- 2. It clarifies certain provisions of the current law governing the public's right to inspect and copy public records at the location of the records or the records custodian.
 - It clarifies that an agency or official must provide the public record requested within a reasonable period of time after the request. As provided in current law, inspection, copying and translation into usable form may be scheduled to occur when the regular activities of the agency or official will not be delayed or inconvenienced.
 - It clarifies current law concerning translating records into a form usable by the requester. The agency or official may require payment in advance of the costs of translation under certain circumstances.
 - It addresses the fees that may be charged for fulfilling a request for public records, including copying costs as well as fees for searching for and retrieving records. The law is clarified to provide that only a reasonable fee may be charged for copies of public records. The issue of

LD TITLE COMMITTEE RESULT REFERENCE

- whether to cap copying fees is added to the duties of the Committee to Study Compliance with Maine's Freedom of Access Laws, which this bill extends for an additional year.
- It establishes provisions governing the recoupment of costs of searching for, retrieving and compiling records to satisfy a request. After the first hour of staff time to search for, retrieve and compile records, the agency or official may charge up to \$10 per hour for such staff services for each request. Compiling a public record includes reviewing the record and redacting confidential information.
- It does not require an agency providing copies to charge for copying. However, an agency that does charge for copies is allowed to waive all or part of the regular charge if the requester is indigent or if release of the record is not primarily in the commercial interest of the requester and the release is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government. This waiver standard is modeled on the waiver standard that is part of the federal Freedom of Information Act.
- 3. It requires the Office of Policy and Legal Analysis and the Office of the Revisor of Statutes to produce a bill that lists in the freedom of access laws all the public records exceptions that exist in the Maine Revised Statutes. The bill requires that provisions excepting records from the definition of "public records" be reviewed to determine if the exceptions should be continued, modified or repealed. A cyclical review process is established for a legislative review committee, the Judiciary Committee, to review and evaluate all the identified exceptions at least once every 10 years. Criteria are established for the review and evaluation. The legislative committees of jurisdiction will have an opportunity to participate in the review and evaluation process. During the second regular session of each Legislature, the Judiciary Committee is required to report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process.

Sponsor: Representative Norbert

LD	TITLE	COMMITTEE	RESULT	REFERENCE	
1253	Resolve, Directing the Department of Conservation To Implement a Pilot Project To Evaluate Outdoor Playground Surface Materials	ACF	Signed: 3/10/2004	Res. 2004 C. 110	

This Resolve requires the Director of the Bureau of Parks and Lands within the Department of Conservation to work with representatives of the Department of Education, the Department of Environmental Protection and the State Planning Office to develop a pilot project to evaluate the use of waste tire material as a playground surfacing material. The playground chosen for the pilot project must be within a state park or recreation area managed by the Bureau of Parks and Lands. The material used must conform to guidelines for outdoor playground surfaces developed by the Department of Education in accordance with Resolve 2003, chapter 10. The waste tire material may be restricted to certain areas within the playground. Implementation of the pilot project is contingent upon the director's securing necessary funding from private and public sources. The Director of the Bureau of Parks and Lands is required to report to the Agriculture, Conservation and Forestry Committee by January 15, 2005 on the pilot project, including a description of the project location and areas surfaced, the type, source and cost of waste tire material used and the plan for evaluating the material.

Sponsor: Representative Trahan

1661 Resolve, Regarding the Sale of Batteries Containing NAT Signed: Res. 2004 4/09/2004 C. 125

This resolve requires the DEP to study the sales of batteries that contain mercury and to submit a report of its findings to the Natural Resources Committee by January 14, 2005.

Sponsor: Representative Cowger

1790 An Act To Reduce Contamination of Breast Milk and the NAT Signed: PL 2004 Environment from the Release of Brominated Chemicals in Consumer Products Signed: PL 2004 4/14/2004 C. 629

This bill does the following:

- 1. It prohibits the sale and distribution of new products that contain more than 1% of the "penta" or "octa" mixtures of polybrominated diphenyl ethers (brominated flame retardants) beginning January 1, 2006.
- 2. It provides that it is the intent of the Legislature to reduce the risk of the "deca" mixture of polybrominated diphenyl ethers by implementing risk management measures or by prohibiting the sale of products containing more than 1% of the "deca" mixture beginning January 1, 2008 if a safer, nationally available alternative is identified.
- 3. It requires the DEP, with the Bureau of Health, to review relevant risk assessments in connection with brominated flame retardants and relevant findings and rulings by the United States Environmental Protection Agency and the European Union. The DEP is required to annually submit to the Natural Resources Committee, by no later than January 5th, a report regarding the regulation of brominated flame retardants, including the nationwide availability of safer alternatives to the "deca" mixture.

LD TITLE COMMITTEE RESULT REFERENCE

If, after reviewing the recommendations of the DEP, the Natural Resources Committee determines that a safer alternative to the "deca" mixture is nationally available, the committee may report out to any session of the Legislature legislation to implement risk management measures or to enact a prohibition on the sale and distribution of products containing the "deca" mixture.

Sponsor: Representative Pingree

1806 An Act To Provide for the Safe Disposal of Household NAT Signed: PL 2004 Hazardous Waste 3/24/2004 C. 567

This bill requires state agencies when awarding grants or making discretionary investments under certain programs to give preference to a municipality that is part of a household hazardous waste collection region for the purpose of establishing collection centers to accept household hazardous waste for disposal by residents on a year round basis. However, this requirement does not apply to state grants or other assistance for sewage treatment facilities, public health programs or education.

Sponsor: Representative Curley

1826 An Act To Encourage the Proper Disposal of Unused HHS Signed: PL 2004 Pharmaceuticals 5/05/2004 C. 679

This bill establishes the Unused Pharmaceutical Disposal Program effective July 1, 2005. The Maine Drug Enforcement Agency (MDEA) will administer the program, the purpose of which is to ensure the safe, effective and proper disposal of unused pharmaceuticals. The bill also establishes the Unused Pharmaceutical Disposal Program Fund to be used by MDEA to fund or assist in funding the program. MDEA may accept funds into the fund from any non-General Fund, nonpublic fund source, including grants or contributions of money or other things of value, that it determines necessary to carry out the purposes of the program.

The bill also establishes the Maine Drug Return Implementation Group, effective July 1, 2005, to study issues for the Unused Pharmaceutical Disposal Program and to make recommendations for implementation of the program in a manner that addresses the issues, safeguards the public health and environment and meets the requirements of local, state and federal law. The DEP Commissioner or the commissioner's designee is a member of the group. The group is required to seek outside funds to fully fund all its costs. However, if sufficient outside funding has not been received by September 15, 2004 to fully fund all costs of the study group, then no meetings are authorized and no expenses of any kind may be incurred or reimbursed. Contributions to support the work of the study group may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied.

Lastly, by January 31, 2005, the study group is required to report to the Health and Human Services Committee with information and recommendations on establishing the program. The Health and Human Services Committee is required to review the report and may report out legislation to the First Regular Session of the 122nd Legislature.

Sponsor: Senator Bromley

LD	TITLE	COMMITTEE	RESULT	REFERENCE
1863	An Act to Provide Additional Financing for Costs Associated with the Remediation of a Waste Oil Handling Facility Site in Plymouth	NAT	Signed: 4/06/2004 (Emerg.)	

This bill specifies that money in the Waste Oil Clean-up Fund may be used for direct loans or deferred loans for remedial design or a technical impracticability study under the Plymouth Waste Oil Loan Program. The bill further specifies that applications submitted for these purposes must be received by the Finance Authority of Maine (FAME) within 90 days after the effective date of this bill, except that FAME may extend that deadline by an additional period of time not to exceed 60 days for good cause shown.

Sponsor: Senator Martin

1892 An Act To Protect Public Health and the Environment by NAT Signed: PL 2004 Providing for a System of Shared Responsibility for the Safe Collection and Recycling of Electronic Waste

This bill establishes a system to provide for the collection and recycling of computer monitors and televisions in the State. It does the following:

- 1. By December 31, 2004, the DEP is required to publish management guidelines for the environmentally sound handling, processing, refurbishment and recycling of covered electronic devices as required under this bill.
- 2. By March 1, 2005, manufacturers of computer monitors and televisions are required to submit plans for the collection and recycling or reuse of computer monitors and televisions produced by manufacturers and generated as waste by households in Maine. By January 1, 2006, manufacturers are required to implement and finance the implementation of these plans and are responsible for all costs associated with the development and implementation of the plans. According to the bill, if the costs are passed on to consumers, the costs must be imposed at the time of purchase and not with a fee imposed at the end of life of the computer monitor or television.
- 3. Beginning January 1, 2006, computer manufacturers and television manufacturers are responsible for the handling and recycling of computer monitors and televisions that are received at consolidation facilities and must pay for the operational costs of the consolidation facilities attributable to the handling of computer monitors and televisions. The bill requires the DEP to adopt routine technical rules that identify the criteria that consolidation facilities must use when determining the reasonable operational costs that are attributable to the handling of computer monitors and televisions.
- 4. Beginning January 1, 2006, consolidation facilities are required to identify the manufacturer of computer monitors and televisions delivered to the facility and to transport those items to recycling and dismantling facilities.
- 5. Municipalities that choose to participate in the collection and recycling system must ensure that computer monitors and televisions generated as waste from households within their jurisdictions are delivered to a consolidation facility.
- 6. Beginning January 1, 2007, and annually thereafter, the DEP is required to provide manufacturers and consolidation facilities with a listing of each manufacturer's pro rata share of orphan waste computer monitors and televisions. The department shall determine each manufacturer's pro rata share based on the best available information, including but not limited to data provided by manufacturers and consolidators and data from electronic waste collection programs in other jurisdictions within the United States.

LD TITLE COMMITTEE RESULT REFERENCE

- 7. Beginning July 1, 2007, and annually thereafter, a manufacturer that offers a computer monitor or television for sale in this State is required to submit a report to the DEP that includes the following: a description of the collection, consolidation and recycling services utilized to recover the manufacturer's products; substantiated estimates, on an annual basis for the preceding calendar year, of the quantities of covered electronic devices marketed in this State and collected for recovery in this State; the capture rate for electronics based on sales in this State; substantiated estimates of the percentage of collected materials that are reused and recycled from its products; the identification of end markets for the collected waste; and any systems implemented by the manufacturer to ensure environmentally sound management of its products. The department may keep information submitted pursuant to this paragraph confidential as provided under section 1310-B of the statutes governing waste management.
- 8. By January 15, 2008 and every 2 years thereafter until January 15, 2014, the DEP is required to submit a report on the recycling of electronic waste in the State to the Natural Resources Committee. The report must include an evaluation of the recycling rates in the State for covered electronic devices, a discussion of compliance and enforcement related to the requirements of this section and recommendations for any changes to the system of collection and recycling of electronic devices in the State.
- 9. By March 30, 2005, the DEP is required to report to the Natural Resources Committee on whether the handling and recycling costs attributable to abandoned waste should be included in the reasonable operational costs of consolidation facilities.

Sponsor: Representative Koffman

1901 An Act To Protect Health and the Environment by Improving the System for the Collection and Recovery of Mercury-added Thermostats

This bill requires manufacturers of thermostats that contain mercury or manufacturers of thermostats that may replace thermostats that contain mercury to provide incentives and sufficient information to purchasers and consumers of the thermostats for the purchasers or consumers to ensure that mercury in thermostats being removed from service is reused, recycled or otherwise managed in compliance with statutory requirements. The bill further specifies that manufacturers that have complied with the provisions of this law are not liable for improper disposal by purchasers or consumers of thermostats. Also, manufacturer collection programs conducted in accordance with the DEP's universal waste rules automatically meet the requirements of this law.

NAT

Signed:

4/14/2004 C. 640

PL 2004

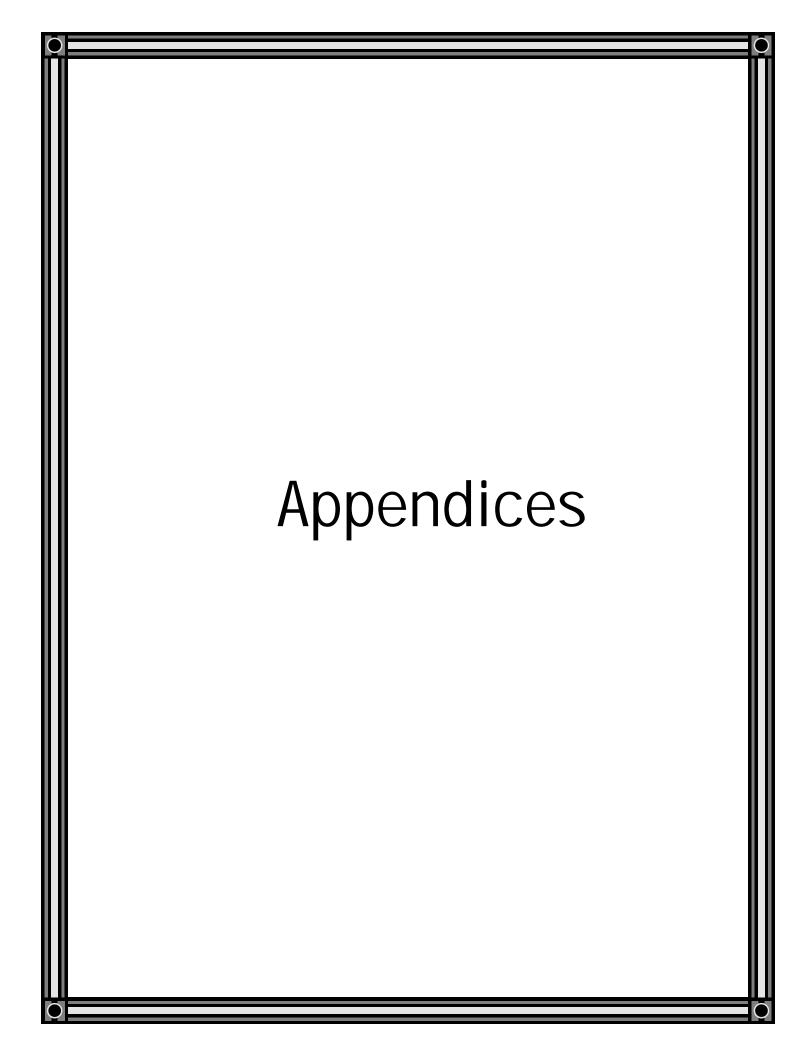
The bill also prohibits wholesalers from selling thermostats in the State unless the wholesaler acts as a collection site for thermostats that contain mercury either by participating in a manufacturer collection program or by disposing of the collected thermostats in accordance with the DEP's universal waste rules.

Sponsor: Representative Koffman

LD	TITLE	COMMITTEE	RESULT	REFERENCE
1935	An Act To Create the Starboard Water District	UTE	Signed: 4/22/2004 (Emerg.)	P&SL 2004 C. 47

This bill creates the Starboard Water District (S.W.D.) within the Town of Machiasport. S.W.D. is being created in order to provide an adequate and potable supply of water to area residents affected by contamination from a former military radar transmission station.

Sponsor: Senator Shorey



Appendix I

Bills Tracked by the Department but not Enacted by the Legislature

1)	71	An Act To Ban Strikebreakers
2)	419	An Act To Repeal Outdated and Unfunded Municipal and Educational Mandates
3)	939	An Act To Repeal the Fee on Aquacultural Salmon Production
4)	942	An Act To Create Guidelines To Promote Good Science in Rulemaking
5)	962	An Act to Consolidate the Advocacies of the Various State Agencies into an Executive Department and Establish the Office of Inspector General
6)	1089	An Act To Authorize a General Fund Bond Issue in the Amount of \$15,000,000 for Energy Conservation in State Buildings and Facilities
7)	1646	Resolve, To Establish a Demonstration Project To Introduce Grass Carp to Inland Waters
8)	1675	An Act To Reestablish the Great Ponds Act
9)	1776	An Act To Authorize a General Fund Bond Issue in the Amount of \$150,000,000 To Finance the Acquisition of Land and Interest in Land for Conservation, Water Access, Outdoor Recreation, Wildlife and Fish Habitat and Farmland Preservation and To Access \$50,000,000 in Matching Contributions from Public and Private Sources
10)	1845	An Act To Amend the Bacteria Standard and Dissolved Oxygen Standard for Certain Waters
11)	1875	An Act To Authorize Department of Transportation Bond Issues in the Amount of \$18,250,000 To Match Available Federal Funds for Improvements to and Development of Highways and Bridges; Airports; Ferry Vessels, Port Facilities and Marine Infrastructure; Rail Corridors and Structures; Intermodal Facilities; and Trail and Pedestrian Facilities
12)	1876	An Act To Authorize a General Fund Bond Issue in the Amount of \$16,600,000 To Construct and Upgrade Water Pollution Control Facilities, To Remediate Solid Waste Landfills, To Clean Up Uncontrolled Hazardous Substance Sites, To Provide Municipal Stormwater Management Assistance, To Investigate and Remediate Municipal Brownfields, To Construct and Upgrade Public Water Systems and To Remediate Lead Paint in Low-income Households
13)	1963	An Act To Provide a Consistent Deadline for Filing Regulatory Agendas

Appendix II

Bills Tracked by the Department but which have no Direct impact on Department Responsibilities

1)	671	An Act To Facilitate the Development of Cost-effective Distributed Electricity Generation in the State
2)	1261	An Act To Support Clean and Efficient Energy for the Future of Maine's Economy and Environment
3)	1659	An Act To Streamline the Time-share Rate Collection Process for Sanitary Districts
4)	1694	An Act To Amend the Motor Vehicle Laws
5)	1702	An Act To Provide for Department of Marine Resources Jurisdiction Over Certain Sections of the State's Endangered Species Program
6)	1846	Resolve, Regarding Legislative Review of Portions of Chapter 895: Underground Facility Damage Prevention Requirements, a Major Substantive Rule of the Public Utilities Commission
7)	1920	An Act To Revise the Fish and Wildlife Laws To Complement the Recodification of Those Laws
8)	1930	An Act To Promote Intergovernmental Cooperation, Cost Savings and Efficiencies
9)	1942	Resolve, Authorizing Certain Land Transactions by the Department of Conservation, Bureau of Parks and Lands

Appendix III

Bills Requiring DEP Actions

1.) LD 1158 An Act To Protect Maine's Coastal Water {PL 2003 Ch. 650}

- The DEP is required to adopt routine technical rules to implement, with certain changes, the requirements in the federal Consolidated Appropriations Act of 2001, Public Law 106-554, Section 1(a)(4) and Appendix D, Division B, Title XIV, Section 1404(b) or (c), 114 Stat. 2763, 2763A-316 and Code of Federal Regulations 159.315 and 159.317 (2003).
- The DEP is required to enter into a memorandum of agreement with the U.S. Coast Guard to consolidate information requirements of the DEP and the Coast Guard to the extent acceptable to the Coast Guard.
- The DEP is authorized to recommend to the Natural Resources Committee that application be made by the DEP to the EPA for additional no-discharge zones, including all or part of the coast, as appropriate at future dates.
- By January 15, 2005, the DEP is required to submit a report to the Natural Resources Committee concerning issues related to air emissions from vessels. The report must include draft legislation necessary to implement any proposal. The committee is authorized to report out legislation during the First Regular Session of the 122nd Legislature.
- By January 1, 2006, the DEP is required to submit a report to the Natural Resources
 Committee concerning whether small commercial passenger vessels, or a subset of
 small commercial passenger vessels, should be required to seek authorization to
 discharge graywater. The DEP is authorized to report out legislation during the
 Second Regular Session of the 122nd Legislature concerning graywater discharges
 from small commercial passenger vessels.

2.) LD 1661 Resolve, Regarding the Sale of Batteries Containing Mercury {Resolve 2003 Ch. 125}

 By January 14, 2005, the DEP is required to submit a report to the Natural Resources Committee regarding the department's review of the sale of batteries containing mercury.

3.) LD 1790 An Act To Reduce Contamination of Breast Milk and the Environment from the Release of Brominated Chemicals in Consumer Products {PL 2003 Ch. 629}

• The DEP, with the Bureau of Health, is required to review relevant risk assessments in connection with brominated flame retardants and relevant findings and rulings by EPA and the European Union. By no later than January 5th of each year, the DEP is required to submit a report regarding the regulation of brominated flame retardants to the Natural Resources Committee.

4.) LD 1849 Resolve, Regarding Legislative Review of Chapter 355: Sand Dune Rules, a Major Substantive Rule of the Department of Environmental Protection {Resolve 2003 Ch. 130}

- The DEP is required to amend its provisionally adopted, major substantive sand dune rule to provide that elevators, in addition to ramps that are required for compliance with the requirements of the Americans with Disabilities Act (ADA) are exempt from the requirement that a new structure or addition to an existing structure may not be constructed on or seaward of a frontal dune. The rule must also be amended to provide that elevators or ramps serving buildings required to comply with the ADA must be designed and constructed so as to minimize intrusion on the frontal dune, including locating the structures to the rear of buildings or within areas of a lot already developed, such as a parking area. The resolve specifies that the DEP is not required to hold hearings or conduct other formal proceedings prior to finally adopting the rules in accordance with the resolve.
- By May 15, 2004, the DEP and DOC are required to convene a meeting of stakeholders to consider various issues associated with sand dunes.
- By January 17, 2005, the DEP is required to report to the Natural Resources
 Committee on the progress of the sand dune stakeholders meetings and to submit
 draft revised sand dune rules and a statewide beach nourishment policy.
- By January 16, 2006, the DEP is required to submit to the Natural Resources
 Committee recommendations on a state acquisition program, wildlife habitat
 management initiatives and removal of the existing statutory prohibition on the use of
 outdated v-zone maps.
- By January 16, 2006, the DEP is required to provisionally adopt and submit to the Legislature revised sand dune rules.

5.) LD 1866 An Act Relating to Storm Water Management {PL 2003 Ch. 607}

- By no later than January 2, 2005, the Board of Environmental Protection is required to provisionally adopt and submit to the Legislature major substantive rules to regulate storm water management.
- By no later than January 2, 2005, the DEP is required to submit a bill to the First Regular Session of the 122nd Legislature amending provisions in the statutes governing storm water to resolve inconsistencies between those statutes and the rules adopted pursuant to this bill.

6.) LD 1870 An Act To Prohibit the Sale of Gasoline Containing MTBE {PL 2003 Ch. 638}

 By March 1, 2006, the DEP is required to present a report to the Natural Resources Committee on the implementation and status of the prohibition on the sale of gasoline containing more than ½ of 1% by volume methyl tertiary butyl ether, or MTBE.

7.) LD 1892 An Act To Protect Public Health and the Environment by Providing for a System of Shared Responsibility for the Safe Collection and Recycling of Electronic Waste {PL 2003 Ch. 661}

- By December 31, 2004, the DEP is required to publish management guidelines for the environmentally sound handling, processing, refurbishment and recycling of covered electronic devices as required by this bill.
- By March 30, 2005, the DEP is required to report to the Natural Resources
 Committee on whether the handling and recycling costs attributable to abandoned
 waste should be included in the reasonable operational costs of consolidation
 facilities. For purposes of this report, "abandoned waste" means a covered electronic
 device that is not orphan waste and for which a manufacturer does not pay the
 consolidation facilities handling and recycling costs within 90 days of the 3rd monthly
 billing.
- Prior to January 1, 2006, the DEP is required to adopt routine technical rules that identify the criteria that consolidation facilities must use to determine reasonable operational costs attributable to the handling of computer monitors and televisions.
- Annually, beginning January 1, 2007, the DEP is required to provide manufacturers
 and consolidation facilities with a listing of each manufacturer's pro rata share of
 orphan waste computer monitors and televisions. The department shall determine
 each manufacturer's pro rata share based on the best available information, including
 but not limited to data provided by manufacturers and consolidators and data from
 electronic waste collection programs in other jurisdictions within the United States.
- By January 15, 2008, the DEP is required to submit a report on the recycling of
 electronic waste in the State to the Natural Resources Committee and every 2 years
 thereafter until January 15, 2014. The report must include an evaluation of the
 recycling rates in the State for covered electronic devices, a discussion of compliance
 and enforcement related to the requirements of this bill and recommendations for any
 changes to the system of collection and recycling of electronic devices in the State.